

HOUSE BILL No. 1105

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-32.

Synopsis: Collective bargaining for public employees. Authorizes collective bargaining for certain employees of the executive branch of the state. Establishes the public employees relations board to conduct elections and make determinations concerning exclusive bargaining representatives and representation matters. Allows an elected state officer to opt in to collective bargaining for the officer's employees. Establishes 11 statewide bargaining units, and requires the director of the state personnel department to determine each employee's bargaining unit assignment. Provides that an employee who threatens, encourages, or participates in a strike, slowdown, or other interruption may be dismissed and would be ineligible for rehiring for at least one year. Provides that an employee organization that threatens, encourages, or participates in a strike, slowdown, or other interruption is decertified as an exclusive bargaining representative for at least one year. Reinstates the settlements between the state and employee organizations that were rescinded by Executive Order 05-14.

Effective: Upon passage.

Kersey

January 5, 2010, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1105

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-32 IS ADDED TO THE INDIANA CODE AS A
2 **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **ARTICLE 32. COLLECTIVE BARGAINING FOR**
5 **EMPLOYEES OF THE EXECUTIVE BRANCH**

6 **Chapter 1. Definitions**

7 **Sec. 1. The definitions in this chapter apply throughout this**
8 **article.**

9 **Sec. 2. "Bargaining unit" means classes or groups of jobs or**
10 **positions that are held by employees whose collective interests may**
11 **be suitably represented by an employee organization for collective**
12 **bargaining.**

13 **Sec. 3. "Confidential employee" means an employee:**

- 14 (1) who works in the personnel office of the employer;
15 (2) who has access to confidential or discretionary
16 information that may be used by the employer in negotiating
17 a collective bargaining agreement under this article;



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(3) who works in the office of the governor or a state officer who provides notice under IC 5-32-3-1;

(4) whose:

(A) functional responsibilities; or

(B) knowledge;

concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or

(5) who is a personal secretary of the chief administrative or executive officer of an agency.

Sec. 4. "Employee" means an individual who is employed by the employer, unless the individual is any of the following:

(1) An intermittent, temporary, or student employee.

(2) A member of a board or commission.

(3) A confidential employee.

(4) A supervisor.

(5) A managerial employee.

(6) A patient or resident of a state institution.

(7) An individual in the custody of the department of correction or any law enforcement agency.

(8) The chief administrative or executive officer of an agency.

(9) An attorney whose responsibilities include providing legal advice or legal research.

(10) A physician or dentist.

(11) An administrative law judge.

(12) An individual who performs internal investigations.

(13) Teachers at state institutions whose compensation is determined under any of the following:

(A) IC 11-10-5-4.

(B) IC 12-24-3-4.

(C) IC 16-19-6-7.

Sec. 5. "Employee organization" means an organization:

(1) in which employees participate; and

(2) that exists for the purpose of dealing with the employer concerning wages, hours, settlement of grievances, and other terms and conditions of employment.

Sec. 6. (a) "Employer" means the executive branch.

(b) The term does not include any of the following:

(1) Bodies corporate and politic.

(2) State educational institutions.

(3) Unless specifically included under section 7(2) of this chapter, an agency under the direct authority of an elected

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1 state officer.

2 (4) The budget agency.

3 (5) Uniformed members of the national guard.

4 (6) The state personnel department.

5 (7) The PERB.

6 (8) The Indiana education employment relations board
7 established by IC 20-29-3-1.

8 (9) The state board of accounts established by IC 5-11-1-1.

9 Sec. 7. "Executive branch" means the following:

10 (1) Agencies (as defined by IC 4-22-2-3) under the direct
11 authority of the governor.

12 (2) Agencies under the direct authority of any other elected
13 state officer electing coverage under IC 5-32-3.

14 Sec. 8. "Managerial employee" means an individual who is:

15 (1) engaged predominantly in executive and management
16 functions; or

17 (2) charged with the responsibility of directing the
18 effectuation of management policies and practices.

19 Sec. 9. "PERB" refers to the public employees relations board
20 established by IC 5-32-2-1.

21 Sec. 10. "Supervisor" means an individual having authority in
22 the interest of the employer to:

23 (1) hire, transfer, suspend, lay off, recall, promote, discharge,
24 assign, reward, or discipline other employees;

25 (2) adjust employee grievances; or

26 (3) effectively recommend any of the actions in subdivision (1)
27 or (2);

28 if the exercise of the authority is not merely of a routine or clerical
29 nature, but requires the use of independent judgment.

30 Sec. 11. "Temporary employee" means an individual who is
31 employed in a temporary position for not more than ninety (90)
32 days.

33 Chapter 2. Public Employees Relations Board

34 Sec. 1. The public employees relations board (PERB) is
35 established.

36 Sec. 2. (a) The PERB has five (5) members who are appointed
37 by the governor.

38 (b) A PERB member may not:

39 (1) be a representative of or be employed by an employee
40 organization or an affiliate of an employee organization; or

41 (2) hold any other public office.

42 (c) The term of each member is four (4) years.

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1 **Sec. 3. A vacancy on the PERB shall be filled by the governor.**

2 **Sec. 4. The governor shall designate a PERB member to serve**
 3 **as the chairperson.**

4 **Sec. 5. A majority of the PERB members appointed to the board**
 5 **constitutes a quorum.**

6 **Sec. 6. The PERB shall do the following:**

7 **(1) Conduct elections under this article.**

8 **(2) Make determinations concerning exclusive bargaining**
 9 **representatives and representation matters under this article.**

10 **(3) Resolve issues that may arise under this article.**

11 **Sec. 7. The PERB shall adopt rules under IC 4-22-2 to carry out**
 12 **this article.**

13 **Sec. 8. The Indiana education employment relations board**
 14 **established by IC 20-29-3-1 shall provide staff assistance needed by**
 15 **the PERB.**

16 **Sec. 9. (a) Notwithstanding section 2 of this chapter, the terms**
 17 **of the persons initially appointed to the PERB shall be as follows:**

18 **(1) Two (2) members appointed for a term of one (1) year.**

19 **(2) One (1) member appointed for a term of two (2) years.**

20 **(3) One (1) member appointed for a term of three (3) years.**

21 **(4) One (1) member appointed for a term of four (4) years.**

22 **(b) The governor shall make the initial appointments to the**
 23 **PERB not later than June 15, 2010.**

24 **(c) This section expires July 1, 2014.**

25 **Chapter 3. Opt In**

26 **Sec. 1. (a) An elected state officer may elect to have the officer's**
 27 **employees to be subject to this article by submitting a written**
 28 **notice to the PERB.**

29 **(b) The notice must be consistent with the provisions of this**
 30 **article and may not include employees otherwise excluded.**

31 **Chapter 4. Bargaining Units**

32 **Sec. 1. An employee must be included under one (1) of the**
 33 **following eleven (11) bargaining units:**

34 **(1) Labor, trades, and crafts classes, including the following:**

35 **(A) Carpenters.**

36 **(B) Electricians.**

37 **(C) Plumbers.**

38 **(D) Print shop workers.**

39 **(E) Auto mechanics.**

40 **(F) Maintenance workers.**

41 **(G) Similar classes.**

42 **(2) Administrative and technical support that includes clerical**

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and administrative nonprofessional classes, including the following:

- (A) Typists.
- (B) Secretaries.
- (C) Account clerks.
- (D) Computer operators.
- (E) Office service personnel.
- (F) Personnel who provide support services to professionals.
- (G) Other nonprofessional employees who do not meet the standards of other nonprofessional units.

(3) Regulatory, inspection, and licensure nonprofessionals that include individuals who review public and commercial activities, including the following:

- (A) Tax examiners.
- (B) Driver's license examiners.
- (C) Meat inspectors.
- (D) Similar classes.

(4) Health and human services nonprofessionals, including the following:

- (A) Licensed practical nurses.
- (B) Nursing aides.
- (C) Psychiatric attendants.
- (D) Therapy aides.
- (E) Claims takers.
- (F) Similar classes.

(5) Regulatory, inspection, and licensure professional employees empowered to review certain public and commercial activities, including the following:

- (A) Revenue auditors.
- (B) Bank and insurance examiners.
- (C) Public health inspectors.
- (D) Similar classes.

(6) Health care professionals, including the following:

- (A) Registered nurses.
- (B) Pharmacists.
- (C) Licensed therapists.
- (D) Similar classes.

(7) Social services and counseling professionals who provide services and benefits to eligible persons, including the following:

- (A) Employment and training personnel.

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- 1 (B) Welfare caseworkers.
 2 (C) Social workers.
 3 (D) Counselors.
 4 (E) Similar classes.
 5 (8) Engineering, scientific, and information services
 6 professionals, including the following:
 7 (A) Architects.
 8 (B) Chemists.
 9 (C) Geologists.
 10 (D) Civil engineers.
 11 (E) Computer programmers.
 12 (F) System analysts.
 13 (G) Similar classes.
 14 (9) Professional administrative employees with general
 15 business responsibilities, including the following:
 16 (A) Accountants.
 17 (B) Buyers.
 18 (C) Administrators.
 19 (D) Other professional employees who do not meet the
 20 standards of the other professional units.
 21 (10) Public safety, protective service workers, and
 22 institutional security employees, including the following:
 23 (A) Correctional officers.
 24 (B) Building guards.
 25 (C) Firefighters.
 26 (D) Motor carrier inspectors of the state police
 27 department.
 28 (E) Similar classes.
 29 (11) Sworn police officers, including the following:
 30 (A) Law enforcement officers of the state police
 31 department.
 32 (B) Conservation officers of the department of natural
 33 resources.
 34 (C) Excise police of the alcohol and tobacco commission.
 35 Sec. 2. The director of the state personnel department shall
 36 determine the assignment of each employee, including the
 37 employees of a state officer electing coverage under IC 5-32-3-1, to
 38 a bargaining unit under section 1 of this chapter based on the
 39 employee's job classification and position.
 40 Sec. 3. In determining the appropriateness of the assignment of
 41 an employee to a unit in section 1 of this chapter, the director of the
 42 state personnel department shall consider the following:

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(1) The principles of efficient administration of government, including limiting the fragmentation of government administrative authority.

(2) The existence of a community of interest among the employees assigned to the bargaining unit.

(3) The recommendations of the parties involved.

Sec. 4. (a) The assignment of employees and job descriptions to bargaining unit categories under this chapter may not be challenged until July 1, 2011.

(b) Notwithstanding subsection (a), the state personnel director's initial assignment of an employee or a job description to the appropriate bargaining unit is considered to be made, upon the effective date of this act, to the bargaining unit created under Executive Order 03-35 (before it was rescinded by Executive Order 05-14 on January 11, 2005) to which the employee and the job description were assigned on January 10, 2005.

Chapter 5. Representation Proceedings

Sec. 1. An employee organization may be accorded recognition as the exclusive negotiating organization for an appropriate unit.

Sec. 2. The state personnel director may recognize an employee organization as the exclusive negotiating organization of the members of an appropriate unit when the employee organization has been selected by a majority of the employees voting in an election.

Sec. 3. An employee organization may request that an election be held by submitting a petition for election to the PERB. The petition must be accompanied by a showing of interest by thirty percent (30%) of the employees of the appropriate unit.

Sec. 4. Not more than fifteen (15) days after a determination that a valid petition has been submitted, the PERB shall notify interested employee organizations of a proceeding under this chapter.

Sec. 5. An interested employee organization must file a petition of intervention with the PERB, which must be accompanied by a showing of interest by ten percent (10%) of the employees in the appropriate unit within thirty (30) days of notice of the pending election.

Sec. 6. An election under this chapter shall be held within a reasonable time after the determination of a valid petition for election as specified in the PERB's rules.

Sec. 7. (a) The certification of an employee organization as the exclusive bargaining representative of the bargaining unit

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continues as long as the employee organization satisfies the requirements of this article and subsequent guidelines by the PERB applicable to recognition.

(b) Notwithstanding subsection (a), nothing in this chapter shall require the PERB to conduct an election in a unit within twelve (12) months after a valid election in the unit was held under this chapter.

Sec. 8. An employee organization that was certified before January 11, 2005, in an election conducted by the public employees relations board created by Executive Order 03-35 (before it was rescinded by Executive Order 05-14 on January 11, 2005) as the exclusive negotiating organization for a bargaining unit is granted recognition as the exclusive bargaining representative for that unit upon the effective date of this act.

Chapter 6. Collective Bargaining

Sec. 1. An employee organization certified as the exclusive bargaining representative of the employees of a bargaining unit may do the following:

- (1) Speak on behalf of all members of the unit.
- (2) Represent the interests of all members of the unit without:
 - (A) discrimination; and
 - (B) regard to employee organization membership.
- (3) Be permitted exclusively to have organizational membership dues collected by the state by wage assignment under IC 22-2-6-2. This privilege shall be immediately revoked by the state personnel director in the event of a violation of IC 5-32-8-1(a).
- (4) Negotiate, subject to the approval of the governor, with the director of the state personnel department or the director's designee concerning the following mandatory subjects of negotiation:
 - (A) Wages.
 - (B) Hours.
 - (C) Working conditions.

Sec. 2. Recognition of an employee organization shall not preclude an employee or group of employees regardless of the organization membership of the employee from bringing matters of personal concern to the attention of appropriate officials with a representative of the employee's own choosing in a grievance proceeding in accordance with applicable rule or established policy of the state.

Sec. 3. An employee organization shall conduct the solicitation

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of membership, dues, or other internal employee organization business only during the off duty hours of the employees concerned.

Chapter 7. Employer and Employee Rights

Sec. 1. An employer has the right to do the following:

- (1) Direct the work of the employer's employees.
- (2) Hire, promote, transfer, assign, and retain employees.
- (3) Suspend, demote, discharge, or take other disciplinary action against employees.
- (4) Maintain the efficiency of all governmental operations.
- (5) Relieve an employee from duties because of a lack of work or for any other legitimate reason not prohibited by law.
- (6) Determine and implement the methods, means, and personnel by which the employer's operations are to be conducted.
- (7) Take whatever actions may be necessary to carry out the statutory and constitutional mission of the employer.

Sec. 2. (a) An employee has the right to do the following:

- (1) Organize, form, join, and assist an employee organization under this article.
- (2) Refuse to join or participate in the activities of an employee organization.

(b) The rights described in this section do not extend to participation in the collective bargaining process when the participation would result in a conflict of interest or otherwise be incompatible with law.

Chapter 8. Strikes

Sec. 1. (a) It is unlawful for an employee organization to directly or indirectly threaten, encourage, or participate in:

- (1) a strike;
- (2) a slowdown; or
- (3) other interruption or interference with the activities of the state.

(b) It is unlawful for an employee to directly or indirectly:

- (1) threaten, encourage, or participate in a strike, a slowdown, or other interruption or interference with the activities of the state; or
- (2) abstain, in whole or in part, from the full, faithful, and proper performance of the employee's duties of employment.

Sec. 2. An employee who violates section 1 of this chapter may be dismissed. An employee dismissed under this section is ineligible for rehiring with the executive branch for at least one (1) year

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1 following the dismissal.

2 **Sec. 3. An employee organization that violates section 1 of this**
 3 **chapter:**

4 (1) shall cease to be the exclusive bargaining representative of
 5 the bargaining unit and shall be decertified;

6 (2) may not have organizational membership dues collected
 7 on its behalf by the state; and

8 (3) may not submit a petition for certification as the exclusive
 9 bargaining representative of the bargaining unit until at least
 10 one (1) year has elapsed since the decertification under
 11 subdivision (1).

12 **Sec. 4. The remedies and penalties specified by this chapter are**
 13 **separate and are in addition to any other legal or equitable remedy**
 14 **or penalty.**

15 **Chapter 9. Settlements With Employee Organization**

16 **Sec. 1. The settlements in effect between the state and the**
 17 **following employee organizations (before they were rescinded by**
 18 **Executive Order 05-14 on January 11, 2005) are reinstated on the**
 19 **effective date of this article and do not expire except as provided by**
 20 **an enactment of the general assembly:**

21 (1) The settlement between the state and The Unity Team
 22 Local 9212/UAW/AFT, approved by Executive Order 03-44.

23 (2) The settlement between the state and ASCME Council 62,
 24 approved by Executive Order 03-45.

25 (3) The settlement between the state and Indiana Professional
 26 Law Enforcement Association, Local 1041,
 27 I.U.P.A./AFL-CIO, approved by Executive Order 4-1.

28 **SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The public**
 29 **employees relations board established by IC 5-32-2-1, as added by**
 30 **this act, shall carry out the board's duties under this act under**
 31 **interim written guidelines approved by the governor.**

32 **(b) This SECTION expires on the earlier of:**

33 (1) the date rules are adopted under IC 5-32-2-7, as added by
 34 this act; or

35 (2) January 1, 2012.

36 **SECTION 3. An emergency is declared for this act.**

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